

1 AUSTIN P. NAGEL, ESQ.
2 California State Bar #118247
3 LAW OFFICES OF AUSTIN P. NAGEL
4 111 Deerwood Road, Suite 305
5 San Ramon, California 94583
6 Telephone: (925) 855-8080
7 Facsimile: (925) 855-8090

8
9 Attorneys for Secured Creditor,
10 WELL'S FARGO BANK, N.A.

11
12
13 UNITED STATES BANKRUPTCY COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA

16 In Re:

Case No. 11-57252 ASW
(Chapter 13 Proceeding)

17 PAUL J. KELLY and
18 TAMARA B. KELLY,

19 SECURED CREDITOR, WELL'S FARGO
20 BANK, N.A.'S OPPOSITION TO AND
21 REQUEST FOR HEARING ON
22 DEBTORS' MOTION TO VALUE CLAIM
23 AND TO AVOID LIEN

24 _____ /
25
26 Secured Creditor, WELL'S FARGO BANK, N.A. (hereinafter referred to as "Secured
27 Creditor") opposes and requests a hearing set on Debtors, PAUL J. KELLY and TAMARA B.
28 KELLY's (hereinafter referred to as "Debtors") Motion to Value Claim and to Avoid Lien on
the following grounds:

1. On September 7, 2006 Debtors (as Borrowers) entered into a written Fixed
Rate Note (hereinafter referred to as "the Agreement") with Secured Creditor (as Lender).
Pursuant to the terms and conditions of the parties' contractual agreement, Debtors agreed to
pay Secured Creditor the sum of \$148,000.00 due and payable in fifty nine (59) monthly
installment payments of \$1,137.11, commencing on October 22, 2006 and ending with a

1 balloon payment on September 22, 2011. A true and correct photocopy of the Agreement is
2 filed separately herewith and is incorporated herein by reference. The Agreement was
3 secured by a Deed Of Trust (Second Deed of Trust) on the real property more commonly
4 known as 21126 Locust Drive in Los Gatos, California (hereinafter referred to as "The
5 Property"). Further proof of Secured Creditor's security interest in The Property is
6 contained on the Deed Of Trust, a true and correct photocopy of which is filed separately
7 herewith and is incorporated herein by reference.

8

9 2. Secured Creditor objects to the \$450,000.00 valuation allocated to the Property
10 in that Secured Creditor's own investigation into the value of the Property has caused it to
11 conclude that the value of the Property at the time the Debtor filed the bankruptcy petition was
12 \$645,000.00. More specifically on August 3, 2011, Secured Creditor ordered a Broker's Price
13 Opinion on the Property. In the Broker's Price Opinion, Secured Creditor was informed that the
14 Property had a value of \$645,000.00. A true and correct photocopy of the Broker's Price
15 Opinion is filed separately herewith and is incorporated herein by reference. Secured Creditor
16 routinely uses the services of Goodman Dean for purposes of obtaining accurate real estate
17 valuations. Secured Creditor's has found the real estate valuations provided by Goodman Dean
18 to reasonable, reliable and accurate.

19

20 3. Secured Creditor further opposes Debtors' Motion in that the Debtors are
21 attempting to treat Secured Creditor as an unsecured claim, **which it is not!** Pursuant to
22 Debtors' Motion, Debtor states the balance on the First Deed of Trust with Wells Fargo
23 Home Mortgage is \$592,000.00. Accordingly, in view of the Broker's Price Opinion of
24 \$645,000.00 and filed concurrently herewith, there is enough equity in the property for
25 Secured Creditor to be secured.

1 4. Secured Creditor further opposes Debtors' Motion in that Debtors are
2 attempting to immediately strip Secured Creditor's lien and avoid paying Secured Creditor
3 on their loan account with Secured Creditor. Assuming arguendo that credible evidence
4 were presented to the Court establishing that due to the decline in real estate values in the
5 area that the subject real property had in fact dropped to value below the amount of the First
6 Deed of Trust, Debtor is not permitted at this stage of the Chapter 13 plan to strip the lien
7 held by Secured Creditor. Rather, Secured Creditor's deed of trust must remain of record
8 until the plan is completed. This is required by 11 U.S.C. §1325(a)(5)(B)(I).

9
10 5. Secured Creditor believes that if it is forced to accept Debtors' Motion as is
11 presently proposed, Secured Creditor will be prejudiced by its position thereunder and
12 Secured Creditor will continue to suffer substantial, mounting losses.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2 6. Therefore, for the reasons more fully set forth above, Secured Creditor
3 requests that a hearing be held on Debtors' Motion and it shall be the responsibility of
4 Debtors to schedule such a hearing with the above-entitled Court and duly notice Secured
5 Creditor and its attorneys of record herein of the date, time, and location of such hearing.
6

7 Secured Creditor and its attorneys of record herein shall be duly noticed as
8 hereinafter set forth below:

9 **WELLS FARGO BANK, N.A.**
10 Home Equity Group
11 X2303-01A
12 1 Home Campus
13 Des Moines, IA 50328-0001

14 LAW OFFICES OF AUSTIN P. NAGEL
15 111 Deerwood Road, Suite 305
16 San Ramon, CA 94583

17 Dated: August 31, 2011

18 LAW OFFICES OF
19 AUSTIN P. NAGEL

20 By /s/ Austin P. Nagel
21 Attorney for Secured Creditor,
22 WELLS FARGO BANK, N.A.

23 wfbbk.1288opp